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14 Attorneys for Plaintiff
15 United States of America

18 Plaintiff United States of America and defendants
19 Basaaly Saeed Moalin, Mohamed Mohamed Mohamud, Issa
20 Doreh, and Ahmed Nasir Taalil Mohamud hereby jointly file
21 a status report on defendants' direct access to sensitive
22 discovery materials.

BACKGROUND

24 Much of the discovery in this case consists of audio
25 recordings of intercepts authorized under the Foreign
26 Intelligence Surveillance Act of 1978 ("FISA"), as well as
27 translations of certain portions of the audio recordings.
28 On January 3, 2011, United States District Judge Jeffrey T.

1 Miller issued a protective order governing the dissemination
 2 of such audio recordings and transcripts. [Docket No. 34.]
 3 The protective order provided that "defense counsel shall
 4 store all sensitive discovery materials, and any copies
 5 thereof, in a secure place[.]" [Id.]

6 Defense counsel suggested that, in order for the
 7 defendants to review the voluminous audio recordings in an
 8 efficient manner, there should be a mechanism by which the
 9 defendants could directly access the audio recordings (and
 10 translations thereof) within the detention facilities
 11 without always requiring the presence of defense counsel or
 12 a defense investigator.

13 On February 22, 2011, United States Magistrate Judge
 14 Gallo held a hearing to address this issue. Judge Gallo
 15 continued the hearing to March 10, 2011, directing defense
 16 counsel and the Government to confer further concerning the
 17 issue and to provide a joint status report to the Court by
 18 March 8, 2011.

19 **STATUS REPORT**

20 Increasing the defendants' direct access to the audio
 21 FISA information and translations involves three components:
 22 (1) revising the protective order; (2) determining what type
 23 of access the detention facilities will authorize; and (3)
 24 securing appropriate equipment, if necessary, for the
 25 defendants to listen to the audio calls.

26 **A. Amended Protective Order**

27 On February 25, 2011, Judge Miller issued an amended
 28 protective order providing that "defense counsel are

1 authorized to provide copies of the audio FISA information,
 2 and translations thereof, for review by the defendant at the
 3 facility where the defendant is detained outside the
 4 presence of counsel." [Docket No. 56.] The amended
 5 protective order provides that the defendants shall comply
 6 with all protocols and procedures established by the
 7 facilities for accessing, reviewing and securing the copies
 8 when they are not being used by the defendants.^{1/}

9 Accordingly, the protective order now provides a
 10 framework for direct access by the defendants, subject to
 11 procedures established by the detention facilities.

12 **B. Access at the Detention Facilities**

13 The Government has conferred with representatives of
 14 the Metropolitan Correctional Center and GEO Detention
 15 Center. As described below, each facility has agreed to
 16 provide the defendants with substantial, direct access to
 17 the audio recordings and translations.

18 **1. Metropolitan Correctional Center**

19 Defendants Mohamed Mohamed Mohamud and Ahmed Nasir
 20 Taalil Mohamud are currently housed at the Metropolitan
 21 Correctional Center (MCC). MCC representatives have advised
 22 the Government that these defendants will be granted joint
 23 access to discovery on a computer in the library for up to
 24 24 hours a week, when the library is open to male inmates.
 25 Mohamud and Nasir also may choose to split the access time.

26 ^{1/} The amended protective order also provides that the
 27 defendant shall not copy the audio FISA information, or
 28 translations thereof, or otherwise make such materials or
 any portion thereof available to anyone not a party to this
 matter.

1 The defendants may obtain the discovery discs and
2 transcripts from MCC's Education Services department, which
3 will keep and maintain them. The Government will provide
4 a set of the already discovered discs and transcripts to the
5 MCC on or about March 11, 2011.

6 **2. GEO**

7 Defendants Basaaly Moalin and Issa Doreh are housed at
8 GEO. GEO's representative has advised the Government that
9 there are two options for providing these defendants with
10 substantial, direct access to the audio recordings and
11 translations. First, if the defense or the Court will
12 provide a dedicated laptop for this purpose, defendants
13 Moalin and Doreh will be provided joint access to the
14 discovery in an attorney visitor room from 4:00 a.m. to 8:00
15 a.m. daily. These defendants also may choose to split the
16 access time. Alternatively, if no computer is available for
17 this purpose, then GEO has offered to give the defendants
18 access to the discovery on the law library computer from
19 midnight to 4:00 a.m. every day, when other inmates are not
20 present. Kenneth Troiano, counsel for Issa Doreh, has
21 proposed alternative hours for the access time. That
22 proposal has been shared with GEO, and a response is
23 awaited.

24 **3. Laptop for GEO**

25 MCC has advised that it has the necessary equipment to
26 support this special discovery access for defendants Mohamud
27 and Nasir. As noted, however, GEO does not have a dedicated
28 laptop for defendants Moalin and Doreh to have access from

1 4 a.m. to 8 a.m. each day.

2 Kenneth Troiano has made an inquiry to determine if CJA
3 funds can be used to pay for the computer, which the parties
4 view as an inexpensive way to increase discovery access and
5 substantially decrease attorney and investigator costs.

6

7 Dated: March 8, 2011

8 Respectfully submitted,

9 LAURA E. DUFFY
10 United States Attorney

11 s/Caroline P. Han
12 CAROLINE P. HAN
WILLIAM P. COLE
13 Assistant U.S. Attorneys

14 Attorneys for Plaintiff
United States of America

15 Marc B. Geller, APC

16 s/ Marc B. Geller
MARC B. GELLER

17 Attorney for Defendant
Basaaly Saeed Moalin

18 Law Office of Mahir T. Sherif

19 s/ Mahir T. Sherif
MAHIR T. SHERIF

20 Attorney for Defendant
Mohamed Mohamed Mohamud

21 Law Office of Kenneth Troiano

22 s/ Kenneth J. Troiano
KENNETH J. TROIANO

23 Attorney for Defendant
Issa Doreh

24 Law Offices of Holly S. Hanover

1 s/Holly S. Hanover
2 HOLLY S. HANOVER

3 Attorney for Defendant
4 Ahmed Nasir Taalil Mohamud

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2 UNITED STATES DISTRICT COURT

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SOUTHERN DISTRICT OF CALIFORNIA

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UNITED STATES OF AMERICA,) Case No. 10CR4246-JM

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Plaintiff,)

6

v.)

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BASAALY SAEED MOALIN et al.,)

8

Defendants.)

9) CERTIFICATE OF SERVICE

10

IT IS HEREBY CERTIFIED THAT:
11 I, CAROLINE P. HAN, am a citizen of the United States
12 and am at least eighteen years of age. My business address
13 is 880 Front Street, Room 6293, San Diego, California 92101-
14 8893.

15

I am not a party to the above-entitled action. I have
16 caused service of Joint Status Report on Defendants' Access
17 to Discovery on the following parties by electronically
18 filing the foregoing with the Clerk of the District Court
19 using its ECF System, which electronically notifies them.

20

1. Marc Geller
21 Attorney for defendant Moalin
2. Mahir Sherif
22 Attorney for defendant Mohamed Mohamed Mohamud
3. Kenneth Troiano
23 Attorney for defendant Doreh
4. Holly Hanover
24 Attorney for defendant Ahmed Nasir Taalil Mohamud

25

I declare under penalty of perjury that the foregoing
26 is true and correct.

27

Executed on March 8, 2011.

28

s/Caroline P. Han
CAROLINE P. HAN